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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,781	02/13/2001	Evan Sundquist		7871

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/762,781

Applicant(s)

SUNDQUIST, EVAN

Examiner

Patricia L. Nordmeyer

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 5-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Withdrawn Rejections***

1. The 35 U.S.C. 112 1<sup>st</sup> paragraph rejection of claim 1 is withdrawn due to the Attorney of record's explanation of support of the phrase "extending in substantially continuous unbroken" in Figure 2 in the paper dated May 12, 2004.

### ***Repeated Rejection***

2. The 35 U.S.C. 103 rejection of claims 1, 2, 28 and 29 over Jones, Sr. is repeated for the reasons previously of record in the paper dated November 14, 2003 since the arguments presented by the Attorney of record were found to be unpersuasive.

Jones, Sr. discloses a wiper made from sheet material (Column 2, lines 15 – 16 and Figure 2, #18) having six contiguous edges of equal length that defines a hexagonal shape (Figure 1) that define the edges of the two opposing faces with interior portions (Figure 2, #12 and the bottom of the stack, #18). The sheet material is either woven or non-woven and made with cotton or synthetic fibers (Column 2, lines 29 – 32). However, Jones, Sr. fails to disclose a hexagonal edge boundary extending in substantially continuous unbroken relation around said interior portion. The slits in the pad of Jones, Sr. are formed in order to make the handle of the applicator and are continued through the thickness of the layers (Column 2, lines 18 – 23). One of ordinary skill in the art would recognize that the handle of the applicator is an unnecessary

Art Unit: 1772

addition and may be removed; thereby removing the presences of the slits and forming an unbroken boundary extending around the outer edge of the applicator.

3. The 35 U.S.C. 103 rejection of claims 1, 2, 4, 27 and 28 over Morin et al. is repeated for the reasons previously of record in the paper dated November 14, 2003 since the arguments presented by the Attorney of record were found to be unpersuasive.

Morin et al. discloses a wiper (Column 1, lines 5 – 7) made from knitted or woven fibers of polyester or poly(ethylene terephthalate), synthetic filaments, and from yarn (Column 2, lines 54 – 57). The wiper may be cut into any geometric shape (Column 3, lines 55 – 56), and therefore, it would be obvious to one of ordinary skill in the art to form a hexagonal shape having six contiguous sides of equal length. The wiper inherently has interior portions defined by two opposing faces, or surfaces when it is formed since it is formed by a single layer of material (Column 7, lines 41 – 42) having a continuous unbroken relation around the interior portion (Column 3, lines 55 – 56).

It is well settled that a particular shape of a prior invention carries no patentable weight unless the applicant can demonstrate that the new shape provides significant unforeseen improvements to the invention. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947) Also, see *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) In the instant case, the application does not indicate any new, significant attributes of the invention due to its shape which would have been unforeseen to one of ordinary skill in the art. Furthermore, Morin et al. clearly teaches

Art Unit: 1772

that the wiper may be cut into any geometric shape as discussed earlier. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape of the wiper to have six edges. One skilled in the art would have been motivated to do so in order to have any geometrical shape that appealed to the user.

#### ***Response to Arguments***

4. Applicant's arguments filed May 12, 2004 have been fully considered but they are not persuasive.

#### **Interview Summary**

In response to the Attorney of records statement regarding the possible rejection under the combination of Morin et al. and Jones Sr., upon further review of the presented arguments, the rejections of the office action dated November 14, 2003 are being repeated instead of the combination rejection. Please see the response to the argument section below.

#### **Formal Rejections**

Regarding the rejection of claim 1, please the withdrawn rejection section at the beginning of the Office Action.

#### **Obviousness Rejections**

In response to Applicant's argument that the rejection with Jones, Sr. fails to establish a

proper *prima facie* case of obviousness for the hexagonal boundary extending in substantially continuous unbroken relation around the interior portion, Jones, Sr. does disclose a wiper made from sheet material (Column 2, lines 15 – 16 and Figure 2, #18) having six contiguous edges of equal length; however there are slits formed in the handle and through the thickness of the pad (Column 2, lines 18 – 23). One of ordinary skill in the art would recognize that the handle of the applicator is an unnecessary addition and through the removal of the handle, both money and time would be saved. It would have also been obvious to one of ordinary skill in the art at the time the applicant's invention was made that the wiper of Jones, Sr. is a structural equivalent to the claimed wiper, and performs same function, removal of particles.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Morin et al. clearly states that any geometric shape may be used for the wipes (Column 3, lines 55 – 56), even though square shape is preferred. It would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape of the wiper to have six edges. One skilled in the art would have been motivated to do so in order to have any geometrical shape that appealed to the user in the absence of unforeseen results. One of ordinary skill in the art would also have recognized the gained advantages by the hexagonal

Art Unit: 1772

shape, shorter perimeter edges while having a greater interior surface area which leads to less contamination, since one of ordinary skill could use known general geometry formulas to compare the surface areas to the edge perimeter; thereby, giving one of ordinary skill in the art the ability to determine the optimum shape to get a greater surface area with less contamination be it a hexagon or square.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

Art Unit: 1772

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln

*[Signature]*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

*8/18/04*